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April 25, 2008

DECISION AND ORDER
OFFICE OF HEARINGS AND APPEALS

Hearing Officer Decision

Name of Case: Personnel Security Hearing

Date of Filing: November 26, 2007

Case Number: TSO-0569

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization¹ under the Department of Energy's (DOE) regulations set forth at 10 C.F.R. Part 710, Subpart A, entitled, "General Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As discussed below, after carefully considering the record before me in light of the relevant regulations, I have determined that the individual's access authorization should be restored.

I. Background

The individual has held a DOE security clearance for 28 years. In April 2007, the individual reported to DOE Security that he had enrolled in an alcohol treatment program. This revelation prompted the Local Security Office (LSO) to conduct a personnel security interview (PSI) with the individual. After the PSI, the LSO referred the individual to a DOE psychiatrist for a forensic psychiatric examination. The DOE psychiatrist examined the individual in July 2007 and memorialized his findings in a report (Psychiatric Report or Exhibit (Ex.) 7). In the Psychiatric Report, the DOE psychiatrist first opined that the individual meets the diagnostic criteria for Alcohol Dependence as set forth in described in the Diagnostic and Statistical Manual of Mental Disorders, 4th edition, Text Revised (DSM-IV-TR). Ex. 7 at 8. The DOE psychiatrist next opined that this mental condition is an illness which causes, or may cause, a significant defect in the individual's judgment or reliability. *Id.* At the time of the 2007 examination, the DOE psychiatrist did not believe that the individual was either rehabilitated or reformed from his Alcohol Dependence. *Id.*

In October 2007, the LSO sent a letter (Notification Letter) advising the individual that it possessed reliable information that created a substantial doubt regarding his eligibility to hold a security clearance. In an attachment to the Notification Letter, the LSO explained that the derogatory information fell within the purview of two potentially disqualifying

¹ Access authorization is defined as "an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material." 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections (h) and (j) (hereinafter referred to as Criteria H and J, respectively).²

Upon his receipt of the Notification Letter, the individual exercised his right under the Part 710 regulations by requesting an administrative review hearing. On November 27, 2007, the Director of the Office of Hearings and Appeals (OHA) appointed Janet Freimuth the Hearing Officer in this case. On January 3, 2008, I was appointed the substitute Hearing Officer in the case. After obtaining a two-week extension of time from the OHA Director, I convened a hearing in the case. At the hearing, nine witnesses testified. The LSO called one witness and the individual presented his own testimony and that of seven witnesses. In addition to the testimonial evidence, the LSO submitted 18 exhibits into the record; the individual tendered 25 exhibits.

II. Regulatory Standard

A. Individual's Burden

A DOE administrative review proceeding under Part 710 is not a criminal matter, where the government has the burden of proving the defendant guilty beyond a reasonable doubt. Rather, the standard in this proceeding places the burden on the individual because it is designed to protect national security interests. This is not an easy burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) (“clearly consistent with the national interest” standard for granting security clearances indicates “that security determinations should err, if they must, on the side of denials”); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

The individual must come forward at the hearing with evidence to convince the DOE that granting him an access authorization “will not endanger the common defense and security and will be clearly consistent with the national interest.” 10 C.F.R. § 710.27(d). The individual is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The Part 710 regulations are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Hence, an individual is afforded the utmost latitude in the presentation of evidence to mitigate the security concerns at issue.

² Criterion H relates to information that a person has “[a]n illness or mental condition of a nature which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability.” 10 C.F.R. § 710.8(h). Criterion J relates to information that a person has “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse.” 10 C.F.R. § 710.8(j).

B. Basis for the Hearing Officer's Decision

In personnel security cases arising under Part 710, it is my role as the Hearing Officer to issue a Decision that reflects my comprehensive, common-sense judgment, made after consideration of all the relevant evidence, favorable and unfavorable, as to whether the granting or continuation of a person's access authorization will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.7(a). I am instructed by the regulations to resolve any doubt as to a person's access authorization eligibility in favor of the national security. *Id.*

III. The Notification Letter and the Security Concern at Issue

As previously noted, the LSO cites two criteria as bases for suspending the individual's security clearance, Criteria H and J. To support Criterion H, the LSO relies on the DOE psychiatrist's opinion that the individual suffers from Alcohol Dependence, a mental condition, which causes, or may cause, a defect in the individual's judgment or reliability. The LSO also relies on the DOE psychiatrist's opinion to support Criterion J in the case, and the following information: (1) between 1999 and 2006, the individual drank four to seven alcoholic beverages on weekend nights, and one or two alcoholic beverages every weeknight; (2) by 2007, the individual's alcohol consumption had increased to the point where he was consuming three to four alcoholic beverages every weeknight, and four to eight alcoholic beverages on weekend nights; (3) the individual became intoxicated 10-15 times a year between 1999 and 2006, after he had consumed six to seven alcoholic beverages; and (4) the individual's wife complained that the individual was consuming too much alcohol and she suggested that he seek help from the Employee Assistance Program (EAP) at his place of employment.

I find that the information set forth above constitutes derogatory information that raises questions about the individual's mental health under Criterion H and his alcohol use under Criterion J. The security concerns associated with Criteria H and J are as follows. First, a mental condition such as Alcohol Dependence can impair a person's judgment, reliability and trustworthiness. *See* Guideline I of the *Revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* issued on December 29, 2005, by the Assistant to the President for National Security Affairs, The White House. Second, the excessive consumption of alcohol itself is a security concern because that behavior can lead to the exercise of questionable judgment and the failure to control impulses, which in turn can raise questions about a person's reliability and trustworthiness. *See id.* at Guideline G.

IV. Findings of Fact

Most of the relevant facts in this case are undisputed. The individual's consumption of alcohol did not rise to a level of significance until 1993 when he was 38 years old. Ex. 7 at 4. Around this time, the individual's mother who was suffering from Alzheimer's disease could no longer live on her own, so the individual moved her into a nursing home in the state in which he resides. Transcript of Hearing (Tr.) at 29. To cope with the emotional distress he was experiencing in witnessing his mother's decline in mental

health, the individual resorted to alcohol. *Id.* at 33. The individual's mother died in December 2003. *Id.* at 34. The individual continued to use alcohol to console his grief. *Id.* In 2004, the individual's employer requested that he transfer to a new division, citing the individual's unique skill set and technical professional expertise as the reason for the request. Tr. at 196. The individual described his new division as a "horrible fit," and related that he coped with the stress and frustration associated with his new position by increasing his alcohol consumption. *Id.* at 35-38. According to the individual, he was drinking three to four times a week in 2006, and by March 2007 he was getting drunk every night at home. Ex. 17 at 17; Tr. at 38.

On April 1, 2007, the individual went hiking alone, broke down and started crying. *Id.* at 40. He returned home and got drunk. *Id.* Later, he discussed with his wife how alcohol was damaging his life. *Id.* His wife asked him to consider contacting the Employee Assistance Program (EAP) at his workplace. The following day, April 2, 2007, the individual went to work and placed three telephone calls: one to his supervisor at the time to tell her that his current job position was not working out; the second to his former supervisor asking if he could return to work for her; and the third to the EAP. *Id.* at 41. The individual's current and former supervisors readily agreed to allow the individual to return to his former position. Ex. 17 at 20. Upon the advice of the EAP, the individual enrolled in an eight-week intensive outpatient program (IOP) with an aftercare component. Tr. At 46. Soon thereafter, the individual reported to DOE Security that he was seeking treatment for alcoholism. Ex. 9.

V. Analysis

I have thoroughly considered the record of this proceeding, including the submissions tendered in this case and the testimony of the witnesses presented at the hearing. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c).³ After due deliberation, I have determined that the individual's access authorization should be restored. I find that restoring the individual's DOE security clearance will not endanger the common defense and security and is clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this decision are discussed below.

A. The Diagnosis of Alcohol Dependence

The individual's counsel stipulated prior to the hearing that the individual suffers from Alcohol Dependence under the criteria set forth in the DSM-IV-TR. *Id.* at 10. The pivotal question before me then is whether the individual has presented convincing evidence that he is adequately reformed or rehabilitated from his Alcohol Dependence.

³ Those factors include the following: the nature, extent, and seriousness of the conduct, the circumstances surrounding the conduct, to include knowledgeable participation, the frequency and recency of the conduct, the age and maturity at the time of the conduct, the voluntariness of his participation, the absence or presence of rehabilitation or reformation and other pertinent behavioral changes, the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress, the likelihood of continuation or recurrence, and other relevant and material factors.

B. Rehabilitation and Reformation from Alcohol Dependence

1. The Individual's Testimony and Documentary Evidence

At the hearing, the individual testified convincingly that he has not consumed alcohol since April 1, 2007. He testified that he completed an eight-week IOP in June 2007, followed by 47 aftercare meetings. *Id.* at 47-48. He added that he continues to attend aftercare meetings regularly. *Id.* He related that as an adjunct to his treatment, he attends a program called LifeRing, which is the secular complement to Alcoholics Anonymous (AA). *Id.* at 50-52. He testified that he actively participates in LifeRing and is now serving as the chairperson of some LifeRing meetings. *Id.* at 53. To corroborate his testimony, the individual presented sign-in sheets from LifeRing which show that he attended 112 self-help recovery meetings between April 17, 2007, and March 9, 2008. *See* Ex. K, Y. He also submitted the negative results from nine random alcohol tests that he took between June 14, 2007, and February 26, 2008. Exs. N and X. In addition, he tendered the Voluntary Recovery Agreement that he entered into on April 13, 2007, with the EAP. Ex. M. He also provided documentary evidence from the EAP to confirm that he is complying with the terms of the 24-month Voluntary Recovery Agreement. Ex. O. In addition, he submitted the Early Recovery Agreement that he entered into with the IOP on April 13, 2007, as well as the Continuing Recovery Agreement that he signed on June 26, 2007. Exs. Q and R.

At the hearing, the individual explained his "Relapse Prevention Plan," and testified convincingly about his commitment to remaining abstinent in the future and his intention to remain connected to LifeRing indefinitely. Tr. At 56-57, 92. By way of example, he related that he attended self-help meetings outside the United States when he was on vacation so that he could maintain his sobriety. *Id.* at 86. The individual also explained at the hearing how LifeRing has helped him to improve his interpersonal skills and to cope with stress. *Id.* at 71, 95. He concluded his testimony by reaffirming his intention never to drink again. *Id.* at 99.

2. The Wife's Testimony

The individual and his wife have been married for 21 years. *Id.* at 215. The wife explained that, beginning in 2000 the individual became withdrawn as he was coping with his mother's declining mental health. *Id.* at 220. She was concerned with the stress that the individual experienced before and after his mother's death, and later with the stress that the individual experienced after changing jobs. *Id.* at 223. She related at the hearing that when the individual was drinking, he became withdrawn, moody and uncommunicative. *Id.* at 232.

The wife testified that the individual "took to recovery very vigorously," removing all the alcohol from their house. *Id.* at 225. She related that from April to June 2007, the individual attended nightly meetings of his IOP and LifeRing. *Id.* at 228. She testified that her husband is now running some of the LifeRing meetings and that both she and her husband are volunteering with maintaining the group's website. *Id.* at 229-230. The wife

commented that in contrast to the days when the individual was drinking, she finds him to be much more communicative in his sober state. *Id.* at 225. The wife also provided convincing testimony that the individual is committed to sobriety. *Id.* at 231. She noted that her husband is very happy now, and related that, from her perspective, their life is better now as a couple. *Id.* at 234.

3. The EAP Counselor's Testimony

The EAP Counselor testified that she met the individual on April 5, 2007, after he sought assistance on his own for issues relating to his alcohol consumption. *Id.* at 105. She explained that the individual entered into a Voluntary Recovery Agreement two weeks after their first meeting. *Id.* at 108. The Voluntary Recovery Agreement placed a number of requirements on the individual, including the following: (1) completion of an Early Alcohol Recovery Program; (2) participation in an alcohol aftercare program for a minimum of six months; (3) attendance at self-help meetings for a minimum of two times per week; (4) meeting with an EAP Counselor a minimum of two times per month; and (5) providing 18 urine or breath samples for periodic drug/alcohol testing over a period of 24 months. Ex. M. The EAP Counselor stated that the individual has complied with all the terms of the Voluntary Recovery Agreement. Ex. O. She related that the individual has been actively involved in developing alternative coping strategies and establishing a very strong sober support system. Ex. O at 2. She opined that the individual's prognosis is excellent, explaining that he has exhibited a high level of insight and self-awareness with regard to his history of alcohol use, has established absolute sobriety, has expended considerable effort to transition to a sober, recovering life style, and has incorporated new tools into the fabric of his everyday life. *Id.*

4. The Licensed Clinical Social Worker's Testimony

A licensed clinical social worker who is the individual's case manager at his IOP confirmed that the individual successfully completed an eight-week Early Recovery Program. Tr. at 159. She testified that the individual attended five group meetings per week for the period April 13, 2007, to June 13, 2007. *Id.* She also related that the individual, upon completing his Early Recovery Program, executed a "Continuing Recovery Agreement," which requires him to attend two self-help meetings per week and one IOP group meeting per week. *Id.* at 159. According to the licensed clinical social worker, most persons sign up for five months of continuing recovery, but the individual opted to sign up for ten months of continuing recovery. *Id.* at 160. The licensed clinical social worker opined that the individual's prognosis for sustained sobriety is excellent as long as he maintains his involvement with the recovery community activities. *Id.* at 172.

5. The Testimony of One Co-Worker and Two Managers

One of the individual's co-workers testified that since the individual's alcohol treatment, he is now more social, explaining that he now interacts with his colleagues in person rather than via e-mail. *Id.* at 185. She noted that the individual's entire work group is a support system for him in his efforts to maintain his sobriety. *Id.* at 186. The individual has shared with the co-worker his intention never to drink again. *Id.* at 191.

Manager #1 testified that the individual left her division to work in another division because his unique skill set was in demand. *Id.* at 196. She has socialized with the individual after work and has not seen him consume alcohol since April 2007. *Id.* at 202.

Manager #2 testified that the individual worked in her division from December 2005 until April 2007. *Id.* at 206-207. She related that when the two traveled out of state on business, the individual would attend some kind of meeting relating to alcohol abstinence. *Id.* at 209.

6. The DOE Psychiatrist's Testimony and Report

The DOE psychiatrist stated in his Psychiatric Report that the individual could not be considered adequately rehabilitated until he had completed 12 to 24 months of alcohol treatment and had established absolute sobriety during that time. Ex. 7 at 8. After listening to the testimony of all the witnesses in the case, the DOE psychiatrist decided that the individual had demonstrated adequate evidence of rehabilitation from his Alcohol Dependence after almost 12 months of sobriety, his completion of the IOP, his continued therapy with the EAP Counselor, and his participation in LifeRing.⁴ *Id.* at 255. The DOE psychiatrist also testified that he was impressed that the individual is serving as a chairperson for some LifeRing meetings, that he has successfully navigated the holiday season without any alcohol cravings, and that he has a relapse prevention plan and good support network in place. *Id.* According to the DOE psychiatrist, there is exceedingly little risk that the individual will drink in the foreseeable future. *Id.* at 250.

7. Hearing Officer Evaluation of Evidence

In the administrative review process, Hearing Officers accord great deference to the expert opinions of psychiatrists and other mental health professionals regarding the issue of rehabilitation or reformation. See *Personnel Security Hearing* (Case No. TSO-0215), <http://oha.doe.gov/cases/security/tso0215.pdf>. *Personnel Security Hearing* (Case No. TSO-0466), <http://oha.doe.gov/cases/security/tso0466.pdf>. In this case, I accorded substantial weight to the revised opinion of the DOE psychiatrist who testified at the hearing that the individual had demonstrated adequate evidence of rehabilitation and reformation as of the date of the hearing. In addition, I accorded much weight to the EAP Counselor and the licensed clinical social worker, who testified that the individual is committed to sobriety. Moreover, I determined that the testimonial and documentary evidence weigh heavily in the individual's favor. First, the individual appears to be internally motivated to address his alcohol problem, as evidenced by the fact that he voluntarily sought professional assistance four months prior to meeting with the DOE psychiatrist and six months before the DOE suspended his security clearance. Second, I am convinced that the individual has an adequate support network in his EAP Counselor, his LifeRing group members, his workplace colleagues, and his wife. Third, I am further

⁴ The DOE psychiatrist testified that, based on the literature provided into the record as Exhibit V and the testimony of several witnesses, he is confident that LifeRing is the equivalent of AA except for the spiritual component. Tr. at 251.

convinced that the individual's support network will help him to cope with any stressors that might otherwise serve as triggers for his alcohol consumption. Fourth, I was convinced from the individual's testimony, and that of his wife and his co-worker, that the individual has recognized that he has an alcohol problem, has changed his attitude towards drinking, and is committed to sobriety. Furthermore, the individual provided corroborating evidence to demonstrate that he abstained from alcohol for almost 12 months, has attended 112 LifeRing meetings and 47 aftercare meetings, is committed to attending LifeRing indefinitely, and will maintain his relationship with the EAP Counselor for another year. In sum, I find that the individual has provided adequate evidence that he is rehabilitated from his Alcohol Dependence. Accordingly, I find that the individual has mitigated the security concerns associated with Criteria H and J.

VI. Conclusion

In the above analysis, I have found that there was sufficient derogatory information in the possession of the DOE that raises serious security concerns under Criteria H and J. After considering all the relevant information, favorable and unfavorable, in a comprehensive common-sense manner, including weighing all the testimony and other evidence presented at the hearing, I have found that the individual has brought forth convincing evidence to mitigate the security concerns associated with both criteria at issue. I therefore find that restoring the individual's access authorization will not endanger the common defense and is clearly consistent with the national interest. Accordingly, I have determined that the individual's access authorization should be restored. The parties may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Ann S. Augustyn
Hearing Officer
Office of Hearings and Appeals

Date: April 25, 2008